

ED

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

THE DISTRICT COUNCIL OF DACORUM  
IN THE COUNTY OF HERTFORD

To, Mr J Connolly  
10 George Street  
St Albans  
Herts

Mr B J Gooding  
38 Wright Close  
Wheathampstead

Alterations to form four dwellings
at 34 High Street
Markyate

Brief  
description  
and location  
of proposed  
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 14.9.84 and received with sufficient particulars on 20.9.84 and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:-

1. The site is within a rural area beyond the Green Belt and in an area referred to in the approved County Structure Plan where permission will only be given for use of land, construction of new buildings, changes of use or extension of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the proposed development is unacceptable in the terms of this policy.
2. The proposal is not supported by evidence of local need sufficient to satisfy Policies 4 and 5 of the adopted Dacorum District Plan.
3. The proposed alterations including erection of fences and formation of large car parking areas would detract from the setting of this Grade II Listed Building.

Dated 7th day of November 1984

Signed *W. B. Marshall*  
Chief Planning Officer

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

LG



# Department of the Environment and Department of Transport

Common Services

Room 1310

Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 858

Switchboard 0272-218811

GTN 2074

CHIEF EXECUTIVE  
OFFICER

25 OCT 1985

File No.

Refer to

Cleared

Messrs Murgatroyds  
36 Holywell Hill  
ST ALBANS  
Herts  
AL1 1BT

~~1/10/85~~  
~~3/10/85~~  
~~4/10/85~~

Your reference				
PLANNING DEPARTMENT				
Our reference DACORUM DISTRICT COUNCIL				
Ref.	T/APP/A1910/A/85/26710/P2		Ack.	
Date				
C.P.O.	24 OCT 85	I.C.	Admin.	File
Received		25 OCT 1985		
Comments				

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
APPEAL BY MR J F CONNOLLY  
APPLICATION NO:- 4/1254/84

- I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Dacorum Borough Council, to refuse planning permission for alteration to 34 High Street, Markyate to form 4 dwellings. I held a local inquiry into the appeal on Tuesday 10 September 1985.
- Markyate, some 4 miles to the south-east of Dunstable and outside the Metropolitan Green Belt, was originally a linear village astride the Roman road, Watling Street. The village has, over the period of years, been extensively developed but the older part of the village remains along the High Street which links at both ends to the A5 Holyhead-St Albans road which bypasses the village. The appeal property is located on the western side of High Street and within the designated Markyate Conservation Area. To the rear of the site is a small development of 16 houses on land which formerly formed part of the grounds of the appeal property. The frontage of the appeal property is set directly on the back edge of the road footpath and the south-eastern part of the building directly abuts the boundary with the adjoining public house.
- The appeal property is a Grade II listed building and comprises a 2-storey 'L' shaped house with attics and basements, and it is linked by a single storey outbuilding to a 2-storey coachhouse. A lean-to single storey addition and conservatory is located at the rear of the property. The frontage onto High Street is an 18th Century addition to the original building which was formerly an inn.
- The building is in a poor condition having been affected in the past by settlement which has caused distortion to the fabric of the building, by penetrating damp mainly due to roof defects and to recent vandalism.
- From the evidence presented to me at the inquiry and from the written representations received, I am of the opinion that a decision in this case rests on whether the proposed alterations and related site works would be harmful to the appearance and setting of the listed building and whether the proposal provides an acceptable standard of development.
- Subsequent to the refusal by the council to grant planning permission for the alteration of the property to 4 dwellings, both in relation to the scheme the subject of this appeal and to an earlier application (for which an appeal was lodged but has subsequently been withdrawn), the local planning authority granted planning permission on 6 June 1985 for alterations to the building to form 3 dwellings.

6. In view of such permission you asked the Council if they would be willing to retract reasons for refusal 1 & 2 as they would be inconsistent with the later permission. The Council declined to do so and in the Borough Secretary's letter of 15 August 1985 stated that the policies referred to in the reasons for refusal were valid as they set out the basic policy towards the proposed type of development. In relation to the approved proposal for 3 dwellings the Council have taken into account Policy 13 of the District Plan which seeks to ensure that buildings of special architectural or historic interest are kept in a good state of repair, and that any alterations and extensions are designed to preserve the character of the building. In the case of the application relating to 3 dwellings it was considered that it provided a viable scheme for the retention of the building. The present proposal was in the view of the local planning authority deficient on a number of design points.

7. The local planning authority also drew attention to the fact that in 1982 outline planning permission had been granted for the erection of 2 bungalows on the basis that the money raised from the sale of one of the bungalows would be used to repair the main house. That planning permission was never implemented.

8. The local planning authority have rejected the proposal in relation to 3 policies contained within the approved Dacorum District Plan and to the effect of the proposal on the setting of the listed building. Policy 2 seeks to restrict development in rural areas outside the Green Belt except in special circumstances such as for agriculture or forestry, leisure purposes and other uses appropriate to a rural area. Policy 5 allows for small scale residential development within the main core of Markyate provided such development accords with Policy 4 which seeks among other things to restrict residential development to that required to meet the housing needs of the rural part of the district and the local facility and service needs of the rural area. In this case the local planning authority contended that the proposal, which was also considered to be unsatisfactory in design terms, was in direct conflict with such policies and would provide units of accommodation of the size of which there was no scarcity in the village; conversely the approval on appeal of 16 dwellings behind the appeal site indicated the need within the village for small starter homes. It was the local planning authority's contention that they had adequately shown their concern relating to the well-being of the appeal property by the planning permissions which have already been granted but that in this case the alterations proposed were going a step too far.

9. In my opinion there is ample evidence to show that the local planning authority have in the past and subsequent to the application for 4 units considered that exceptions can be made to the restrictive District Plan policies relating to residential development in rural areas outside the Green Belt. In the case of the proposed alteration of the appeal premises to 3 units they quite rightly took account of Policy 13 and considered that the need to ensure the continued well-being of this listed building was paramount. No direct reference was made to Policy 13 by the council's expert planning witness nor was a copy of it contained within the bundle of documents put in on behalf of the Council at the inquiry. Neither was reference made to Policy 14 which seeks among other things to encourage the preservation, maintenance and good repair of buildings of individual merit within conservation areas.

10. I take the view that Policies 13 and 14 are particularly pertinent in this case and, as the appeal property is both listed and within a conservation area, provide the necessary grounds to override the restrictive policies cited by the local planning authority in their reasons for refusal. The local planning authority accept that the appeal property is in a poor condition and that one method of ensuring its well being is to convert it into smaller units. Their acceptance of a proposal of 3 units clearly identifies the principle that an exception can be made to Policies 2, 4 and 5.

11. In my opinion therefore there is no justification to dismiss this appeal on the basis that it would conflict with such policies but to consider the appeal entirely on the effects of the proposed development on the listed building itself and to the prospective occupiers over the 4 units.

12. For your client it was argued that notwithstanding the application made and the approval granted for planning and listed building consent for the alteration of the appeal premises to 3 dwellings such works would not be economically viable. A development profit of some 6.9% was not considered to be acceptable and your client's banker had expressed concern and pointed out that it would be difficult for them to provide financial assistance. Of this aspect while it was pointed out that your client did not use the services of a quantity surveyor his own assessment of the development cost closely matched those of the County Architect. However it was considered that a scheme for 4 units would be economically viable, and this was supported by your client's banker, although any delay, which incurred high bank interest charges, would decrease the profit margin, from 22.5% as at March 1985 to some 16.4% at September 1985.

13. You acknowledged that the local planning authority had reservations concerning the conversion of the coachhouse to a single dwelling unit but pointed out that such alteration had been accepted by the local planning authority in their approval of the 3 unit scheme. The alteration in the fenestration of the building, which was a late addition to the main building, would have little or no impact on the setting of the listed building.

14. On the question of privacy it was pointed out that the fencing proposed followed criticism by the local planning authority of an earlier scheme but it was agreed that walling similar to that approved in the 3 unit scheme could be substituted.

15. You argued that the preservation and rehabilitation of the appeal property was the primary consideration and costs were a critical factor and it was simply a case of 4 units or nothing. Instructions have been placed with an estate agent to test the market for offers in excess of £120,000 for property which had the benefit of an extant planning permission for its conversion into 3 dwellings. Only 2 offers were received at £100,000 and £115,000. As the cost to your client at that stage had risen to £120,000 he considered that the only course of action was to appeal against the local planning authority's refusal to grant planning permission. Unless something was done quickly rising costs and the effect of damp and vandalism would make even a 4 unit scheme uneconomic. For the local planning authority it was considered that there were a number of factors relating to the proposal which would affect the general living environment and have serious effects both on the listed building and its setting. Unit 3 would effectively be in a backland situation and its sole access would be poorly sited so that nuisance could arise due to its close proximity to the patio areas of units 1 and 2. Units 3 and 4 being single aspected and facing north-west would be in shadow for much of the day and the outlook from the windows onto a patio only some 12 ft deep and bounded by a palisade fence would be poor. Severe overlooking and loss of privacy would occur between units 2 and 3. The area of car parking would severely detract from the setting of the listed building and the freestanding double garage would visually separate the high level garden area from the main house. The palisade fencing incorporated in the proposal to attempt to overcome privacy problems would be inappropriate in this setting. Finally it was considered that many of the alterations, both internally and externally, would diminish the architectural and historic value of the building particularly in relation to unit 4 where major alterations to the north-western elevation are proposed.

16. No evidence was produced by the local planning authority to challenge the cost figures produced by your client. The indication by the County Architect in

~~relation to the costs for 3 units would appear to bear out your client's own~~  
costings. Whether or not the purchase price of the property, especially in view of its condition, represented value for money is not a matter for me to say but this is the burden, which combined with bank interest charges, has now to be borne by your client. However to purchase the property without the benefit of planning approval for its conversion into smaller units, no matter what advice had been obtained or what pressure was being exerted by the vendor, was to undertake a commercial risk. I do not dispute the figures produced concerning the relative costings for the 3 and 4 dwelling schemes nor do I underestimate the effect of such costings on the commercial viability of bringing the appeal property back into use and into a good state of repair. In such circumstances therefore some loss in the appearance and setting of the listed building could be accepted if there were no alternative other than the loss of the building. However I am not convinced that such situation applies in this case. Your initial acceptance of the commercial risk is in my view no reason to grant planning approval to a scheme which incorporates elements which, and I agree on this point with the local planning authority, not only affect the setting of the listed building but also affect its appearance and the general living environment around the proposed dwellings. The latter has a direct effect on the marketability of the property. To this extent the failure even to sell one unit, at an estimated cost of £77,500, would convert the anticipated development profit of some £43,650 to a loss of some £33,850. In my opinion the proposed subdivision of the main building into 4 units produces a solution which gives rise to severe overlooking and privacy problems as well as producing a poor outlook. The relationship between privacy and outlook being determined by the area of patio which would be provided to each unit. Those areas, especially in view of the fact that they would be the only private areas available to each unit are, in relation to family sized dwellings, extremely restrictive and by being of narrow width or depth would produce an overbearing sense of enclosure. Your client's suggestion to amend the proposed screening to that approved for the 3 unit scheme would reduce the sense of enclosure but not the amount of private space available for each unit.

17. As far as the proposed alterations to the coachhouse is concerned I consider that the scheme produced for the approved 3 dwelling scheme is far superior to that now suggested, as it retains many of the original window openings. While I accept that the coachhouse is not the main building on the site it still constitutes part of the listed building and the retention of the original window openings would to some extent maintain the architectural integrity of that particular building.

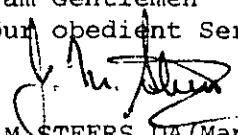
18. Therefore notwithstanding the urgent need to preserve this listed building I consider that the proposal to alter it to 4 units would adversely affect the setting and appearance of the listed building and produce an unacceptable standard of development.

19. I have taken into account all the other matters presented to me at the inquiry and in the written representations but do not find therein any reasons that outweigh the considerations that have led me to these conclusions.

20. An application for costs was made on behalf of your client and I have submitted a report to the Secretary of State for the Environment. This will be the subject of a separate communication from the Department in due course.

21. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

I am Gentlemen  
Your obedient Servant

  
J M STEERS DA(Manc) Registered Architect  
Inspector

APPEARANCES

FOR THE APPELLANT

Mr D Raine

- Solicitor, Messrs Murgatroyds,  
36 Holywell Hill, St Albans,  
Herts, AL1 1BT.

He called:

Mr J F Connolly

- Appellant.

Mr P Beeston

- Manager and Partner,  
Paul Camp Commercial.

Mr M Leyland DipTP

- Land Development and  
Planning Consultant.

FOR THE PLANNING AUTHORITY

Mr J G Vaughan

- Assistant Solicitor,  
Borough Secretary's Department,  
Dacorum Borough Council.

He called:

Mr A E Markham BA MRTPI

- Senior Assistant Planner,  
Dacorum Borough Council.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Notice of inquiry and list of addresses circulated.

Document Set 3 - Put in by Mr J F Connolly.

-/1 - Letter from Barclays Bank PLC dated 29 August 1985.

-/2 - Financial analysis 4 units as anticipated March 1984.

-/3 - Financial analysis 4 units as at September 1985.

-/4 - Financial analysis 3 units as at September 1985.

-/5 - Copy of memorandum from County Architect to County Planning Officer  
(26 February 1985).

Document 4 - Letter from Neil Munro Associates dated 20 August 1985 with minutes  
of a meeting held 31 January 1984 (prepared by Mr J H Tournay).

Document 5 - Copies of 2 letters to the Borough Solicitor from Messrs Murgatroyds  
dated 18 and 26 July 1985 requesting withdrawal by the Council of  
reasons for refusal Nos 1 and 2.

Document 6 - Copy of letter to Messrs Murgatroyds from the Borough Secretary  
dated 15 August 1985.

Document 7 - Advertisements relating to properties available in Markyate.

## DOCUMENTS CONTINUED

Document Set 8 - Put in by Mr A E Markham.

- /1 - LPA1 location plan.
- /2 - LPA2 Extract from the statutory list relating to 34 High Street, Markyate.
- /3 - LPA3 Schedule of the planning history of the site.
- /4 - LPA4 Planning application 4/0867/84 (Scheme A).
  - a. Submitted documents and plans.
  - b. Letter from Markyate Parish Council 11 July 1984
  - c. Observations of County Surveyor 27 July 1984
  - d. Chief Planning Officer's report to Development Control Committee 16 August 1984
  - e. Decision Notice
  - f. Record of meeting 10 September 1984
- /5 - LPA5 Planning application 4/1254/84 (Scheme B)
  - a. Submitted documents and plans
  - b. Letter from Markyate Parish Council 8 October 1984
  - c. Observations of County Surveyor 16 October 1984
  - d. Letter from County Planning Officer 2 November 1984
  - e. Letter from Oakwood Commercial 5 November 1984
  - f. Chief Planning Officer's report to Development Control Committee 7 November 1984
  - g. Decision Notice
  - h. Letter from Paul Camp FRICS 12 December 1984
  - i. Record of meeting 4 January 1985
- /6 - LPA6 Application for listed building consent 4/0484/85LB Planning Application 4/0483/85 (Scheme C)
  - a. Submitted documents and plans
  - b. Letter from Markyate Parish Council 16 May 1985
  - c. Record of meeting 24 May 1985
  - d. Chief Planning Officers report to Development Control Committee 6 August 1985
  - e. Decision Notice 4/0484/85LB
  - f. Decision Notice 4/0483/85

Appeal Decisions

- /7 - LPA7 One house, 2 flats adjacent 1 George Street, Markyate  
DOE ref: APP/A1910/A/84/16082, DBC ref: 4/0339/84.
- /8 - LPA8 Bungalow with garage under between 15 & 17 Pickford Road, Markyate  
DOE ref: APP/A1910/A/84/019087/P3 DBC ref: 4/0239/84.



DOCUMENTS CONTINUED

Policy Documents

- /9 - LPA9 Hertfordshire County Structure Plan Alterations No. 1  
Written Statement (Herts County Council).
- /10 - LPA10 Dacorum District Plan Written Statement - Policies 2, 4 and  
5 (Dacorum District Council 1984)

Document 9 - Dacorum District Plan Written Statement - Policies 13 and 14.

Document 10 - Extract from Department of the Environment Circular 23/77  
para 63(c).

Document 11 - Conditions suggested by the local planning authority.

PLANS

Plan Set A - Application plans.

- /1 - Floor plans and location plan (1055:1A).
- /2 - Elevations (1055:2A).
- /3 - Elevations (1055:3A).

Plan Set B

- /1 - Extent of alterations proposed - overlay of survey on proposed ground  
floor plan.
- /2 - Extent of alterations proposed - overlay of survey on proposed first  
floor plan.

Plan Set C - Site location.

PHOTOGRAPHS

Photograph Set 1 - Nine photographs showing 5 properties refurbished by  
Mr J F Connolly.

MARKYATEBuildings on the Statutory List

<u>D. of E.</u> <u>Ref.</u>	<u>Grade</u>	<u>Site</u>	<u>Description</u>
<u>High St. (North East side)</u>			
15/3	II	No.11	C17. 2s. 3w. and 1w. space. Red brick and grey headers alternately. Stringcourse of ditto. Coved plastered eaves cornice. Tiled roof. Case.ws. on the first floor. Sash ws. with gl. bars intact on the ground fl. and 2 small shop ws. Doorway with flat hood over and door of 2 moulded pans.
15/9	II	Nos.59-73	Range with a C18 front. No.65 (once an inn) is older and the other houses may be also. 2s. 13w. in all. Nos.59-63 red brick, Nos.65-73 red brick and grey headers alternately. Eaves cornice. Tiled roofs. Most gl. bars intact. Nos.61, 71 and 73 have small pleasant C19 shop ws. No.65 has a doorway with reeded pilasters and projecting cornice over. Nos.59-63 have doorways with ped. shaped hoods over. Carriage archway through the north-west end of the ground fl. of No.59. No.65 has a C17 staircase and panelling.
15/10	II	Nos.87 & 89.	Timber-framed bdg. refronted with red brick in the C18. Stringcourse. Tiled roof. Sash ws. with gl.bars intact. 6 pan. doors. 2 s. 4w. and 1w. space. The interior has open fireplaces and some panelling.
15/13	II	Nos.101 & 103.	C16 timber-framed bdg. refronted with brick, but between the 2 houses is a carriage archway through the ground fl. with the timbering exposed and painted brick infilling in the side walls of this archway. Tiled roof hipped at the north-west end. Sash ws. with gl.bars intact. 2s. 4w. C.17 staircase and some panelling.
<u>High St. (South West Side)</u>			
15/17	II	Cavendish House.	Timber-framed bdg.refaced with red brick in the C18. 2s. 9w. Parapet. Tiled roof, steeply-pitched over the 2w. bays at the north-west end. Gl.bars intact. Wide porch with Doric cols. on tall pedestals, triglyph frieze and ped. This contains a doorway at the head of 4 steps with a head in plaster.
15/19	II	No.34	Formerly an inn. C18 front to an older bdg. 2s. 6w. Red brick and grey headers alternately. Brick stringcourse. Wooden eaves bracket cornice. Hipped slate roof. Gl.bars intact. Doorway with reeded pilasters, ped. and semi-circ.fan. Another doorway at the south-east end of the front in moulded architrave surround with rect.fan.
15/22	II	No.64	C18 front to a probably timber-framed bdg. 2s. 5w. Faced with cement and rusticated. Cornice and parapet. Gl.bars missing.

## SCHEDULE OF PLANNING HISTORY

LPA 3

34 HIGH STREET, MARKYATE

4/0850/76	Change of use of part of ground floor for sale of antiques 34 High Street	Permitted 23.9.76
4/1254/81	Erection of two dwellings (outline) rear of 34 High Street	Permitted 4.2.82
4/0492/82	Change of use of coach house and outbuilding to residence rear of 34 High Street	Refused 17.6.82
4/0156/83	Sixteen houses, access road and car parking Cowper Road/rear of 34 High Street	Permitted 22.5.84
4/0867/84 SCHEME A	Alterations to form four dwellings 34 High Street	Refused 16.8.84 APPEAL PENDING
4/1254/84 SCHEME B	Alterations to form four dwellings 34 High Street	Refused 7.11.84 APPEAL PENDING
4/0483/85 SCHEME C	Alterations to form three dwellings 34 High Street	Permitted 6.6.85
4/0484/85LB SCHEME C	Alterations to form three dwellings (Listed Building consent) 34 High Street	Granted 6.6.85

SP



**Department of the Environment**

2 Marsham Street London SW1P 3EB

ROOM C13/20

Direct line 01-212 3254

Switchboard 01-212 3434

The Solicitor  
Dacorum Borough Council  
Civic Centre  
HEMEL HEMPSTEAD  
Herts  
HP1 1HH

Your reference

4/0867/84, 4/1254/84

Our reference

APP/A1910/A/85/26710  
(PLUP 4C)

Date

30 January 1986

Dear Sir

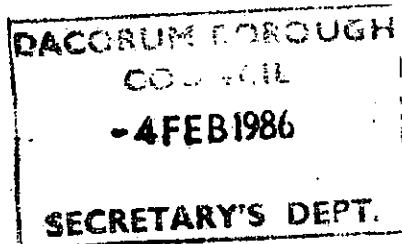
TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36 AND  
SCHEDULE 9  
LAND AND PREMISES AT 34 HIGH STREET, MARKYATE  
APPEAL BY MR J F CONNOLLY

1. I refer to the Inspector's letter of 24 October 1985 notifying his decision on the above-mentioned appeal and to the application for an award of costs made on behalf of the appellant at the local inquiry held on 10 September 1985.

2. A copy of the Inspector's costs report and a copy of the letter conveying the Secretary of State's decision on the application for costs is enclosed for your information. You will see that it has been decided that an award of costs against the Council would not be justified and that the application has therefore been refused.

Yours faithfully

PP B P HALES HUNT





**Department of the Environment**

2 Marsham Street London SW1P 3EB

ROOM C13/20

Direct line 01-212 3254

Switchboard 01-212 3434

Messrs Murgatroyds  
Solicitors  
36 Holywell Hill  
St Albans  
Herts  
AL1 1BT

Your reference

Our reference

APP/A1910/A/85/26710 (PLUP 4C)

Date

30 January 1986

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36 AND SCHEDULE 9  
LAND AND PREMISES AT 34 HIGH STREET, MARKYATE  
APPEAL BY MR J F CONNOLLY

1. I am directed by the Secretary of State for the Environment to refer to the Inspector's letter of 24 October 1985 notifying his decision on the above-mentioned appeal against the decision of the Dacorum Borough Council to refuse planning permission for alterations to the above-mentioned premises to form 4 dwellings. I am now able to deal with the application for an award of costs made on behalf of your client, Mr J F Connolly, at the local inquiry held on 10 September 1985.
2. The submissions made by your client in support of his application for costs, the reply by the Council and the Inspector's comments and recommendation on the matter are set out in the Inspector's costs report, a copy of which is enclosed. In planning appeals the parties are normally expected to meet their own expenses and costs are awarded only in exceptional circumstances on grounds of unreasonable behaviour. Accordingly the application for costs has been considered in the light of paragraph 9 of Ministry of Housing and Local Government Circular 73/65, the Inspector's decision letter of 24 October 1985, his separate report on the question of costs, the appeal papers, and all the relevant circumstances.
3. The Inspector's comments on the costs application were as follows:  
  
"The claim made is only in relation to costs which have been incurred by the appellant in having to provide evidence to justify an exception being made to restrictive policies which apply to rural areas outside the Metropolitan Green Belt. I consider that the appellant can quite rightly feel aggrieved in having to provide such evidence, as was spelt out by the Council in their letter of 15 August 1985 (Document 6 - last sentence of paragraph 2), when he had received a subsequent approval for the alteration of the building into 3 dwellings. Clearly in the latter case the Council had considered Listed Building Policy 13 (Document 9) (which seeks to preserve listed buildings) as overriding, especially in view of the state of repair of the building. An earlier planning approval for 2 bungalows in the then larger grounds of the appeal property was allowed in order to secure the repair of the building. In my opinion this shows an inconsistent approach by the Council in relation to proposals which seek to ensure the well-being of the property.

"In my opinion by their approval of schemes before and after the present proposal the Council's use of restrictive planning Policies 2, 4 and 5, when they admit a great concern for the well-being of the property, would appear to be unreasonable."

The Inspector recommended a partial award of costs should be made.

4. It is seen that the Council's reasons for considering it appropriate to refuse planning permission in this case for the reasons they gave, were that no need had been put forward to justify their making an exception to policies 2 and 4 of the Dacorum District Plan which restrict new dwellings to those required for agriculture or other essential purposes in the rural area, nor any evidence to show that the housing proposals met any special housing needs. They were, they said, mindful, when applying the very restrictive policies 2 and 4 in the case of proposals for the conversion of listed buildings, of the need to find alternative new uses for old buildings and were prepared to consider making an exception to those policies to enable a listed building to be preserved. This they had done in granting planning permission for 2 bungalows in the grounds of the property in 1982 and for 3 dwellings on 6 June 1985. They were, however, only prepared to make an exception to those policies where the proposals would ensure a viable scheme for the retention of a listed building in reasonable circumstances; they were not prepared to provide a policy loophole for any scheme, however over-intensive or otherwise ill-conceived. In the present case the parking provision was only met at the cost of substantial open areas of parkland and part of the elevated garden, thus detracting from the setting of the listed building. Moreover, the division of the courtyard area by palisade fences was inappropriate for a listed building of this quality and would detract from its character and setting; the rooflights proposed would result in an unsatisfactory living environment; the alterations to the elevations of the building would not reflect sympathetically the architectural character of the building; and the removal of internal walls, doorways and staircase would detract from the architectural and historic character of the building.

5. It is noted that in your letter to the Council of 18 July 1985 you accepted that notwithstanding the consent granted by them on 6 June 1985 the policy reasons remained technically as issues to be cavassed at the inquiry and that evidence would be needed to counter those reasons unless the Council indicated otherwise. In your view however those reasons were inconsistent with the permission granted on 6 June 1985 and you therefore invited the Council to withdraw those reasons. In their reply of 15 August 1985 the Council said that they were not prepared to withdraw reasons 1 and 2 because those reasons set out the basic policy towards the type of development proposed and remained valid. It was, the Council said, up to your client to put forward reasons why the Council's basic policy should be waived in this case. They pointed out that in considering the application for the conversion of the building to 3 dwellings they had had regard to Policy 13 of the District Plan and had concluded that an exception to the general policy was justified in that case because the proposal provided a viable scheme for the retention of a listed building. In their letter the Council also offered to identify those areas where there was no disagreement but no subsequent approach had been made to them to discuss that possibility.


6. It is noted that after having heard the evidence of the parties at the inquiry the Inspector concluded that notwithstanding the urgent need to preserve the listed building, the proposal to alter it to 4 units would adversely affect the setting and appearance of the listed building and produce an unacceptable standard of development. He therefore dismissed your client's appeal.

7. Bearing in mind the restrictive policies which applied in this area and the Council's concern to uphold those policies unless they could be satisfied that a development as proposed would preserve the character of a listed building and discourage its demolition (as envisaged by policies 13 and 14), the view is taken that it was not unreasonable for the Council to have decided in this case that those restrictive policies remained valid notwithstanding their previous decisions in respect of proposals where they were satisfied that those policies could be waived for the reason recorded in paragraph 4 above. Moreover, while it is accepted that it might have been

possible for areas of agreement to have been identified before the inquiry, it is not accepted that any such lack of agreement was caused by any unreasonable actions on the part of the Council. For these reasons the Inspector's comments on the costs application are not accepted. The Secretary of State has therefore decided that an award of costs against the Council would not be justified in this case and your client's application is accordingly refused.

8. A copy of this letter has been sent to the Solicitor to Dacorum Borough Council.

I am Gentlemen,  
Your obedient Servant



P. J. FORD

DACORUM BOROUGH COUNCIL

APPEAL

by

MR J F CONNOLLY

APPLICATION FOR COSTS

Inspector: J M Steers DA(Manc) Registered Architect

Date of Inquiry: 10 September 1985

File No: APP/A1910/A/85/26710



Tollgate House  
Houlton Street  
BRISTOL  
BS2 9DJ

23 September 1985

To the Right Honourable Kenneth Baker MP  
Secretary of State for the Environment

Sir

I have the honour to report that on 10 September 1985 I held an inquiry at the Civic Centre, Hemel Hempstead into an appeal by Mr J F Connolly under Section 36 of the Town and Country Planning Act 1971 against the refusal of the Dacorum Borough Council to permit the alteration of 34 High Street, Markyate to form 4 dwellings.

1. The determination of this appeal fell to me by virtue of Schedule 9 of the Town and Country Planning Act 1971 and the Town and Country (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1981 and I have written a decision letter (copy attached) dismissing the appeal.

2. The reasons for refusal were:-

i. The site is within a rural area beyond the Green Belt and in an area referred to in the approved County Structure Plan where permission will only be given for use of land, construction of new buildings, changes of use or extension of existing buildings for agricultural or other essential purposes appropriate to a rural area or small-scale facilities for participatory sport or recreation. No such need has been proven and the proposed development is unacceptable in the terms of this policy.

ii. The proposal is not supported by evidence of local need sufficient to satisfy Policies 4 and 5 of the adopted Dacorum District Plan.

iii. The proposed alterations including erection of fences and formation of large car parking areas would detract from the setting of this Grade II Listed Building.

#### APPLICATION FOR COSTS

3. For the appellant it was stated that the claim for costs was limited to dealing with reasons for refusal Nos 1 and 2 and that the Council's application of policy when comparing the proposed alteration of the property to 4 dwellings rather than the approved 3 dwellings was overburdensome.

4. Letters to the Borough Solicitor on 16 and 26 July 1985 (Documents 5/1 and 5/2) gave notice of the appellant's intention to proceed with the appeals (the appeal in relation to Scheme A - application No. 4/0867/84 being subsequently withdrawn) and offered the local planning authority the opportunity to withdraw reasons for refusal Nos 1 and 2 as the approval of a later application for 3 dwellings (Scheme C - application No. 4/0483/85) (Document 8/3) indicated that an exception could be made to District Plan Policies 2, 4 and 5 (Document 8/10).

5. For the Council it was pointed out that in a letter dated 15 August 1985 (Document 6) the request for the withdrawal of reasons 1 and 2 was rejected as it

was considered that the basic policy towards this type of development remained valid. However an offer was made to agree to identify matters on which there was no disagreement in order to avoid the need to call unnecessary evidence. The letter was acknowledged but no approach was made on behalf of the appellant to discuss such matters. The Council considered that both the present proposal and that of the subsequently approved scheme for 3 dwellings were contrary to District Plan Policies 2, 4 and 5. However the scheme for 3 dwellings was viable and Plan presented a means of ensuring the preservation of the listed building. It was the Council's contention that the later application for 3 dwellings was a tactical application and was being used as a means to overcome policy objections to the present proposal.

#### COMMENTS

6. The claim made is only in relation to costs which have been incurred by the appellant in having to provide evidence to justify an exception being made to restrictive policies which apply to rural areas outside the Metropolitan Green Belt. I consider that the appellant can quite rightly feel aggrieved in having to provide such evidence, as was spelt out by the Council in their letter of 15 August 1985 (Document 6 - last sentence of paragraph 2), when he had received a subsequent approval for the alteration of the building into 3 dwellings. Clearly in the latter case the Council had considered Listed Building Policy 13 (Document 9) (which seeks to preserve listed buildings) as overriding, especially in view of the state of repair of the building. An earlier planning approval for 2 bungalows in the then larger grounds of the appeal property was allowed in order to secure the repair of the building. In my opinion this shows an inconsistent approach by the Council in relation to proposals which seek to ensure the well-being of the property.

7. In my opinion by their approval of schemes before and after the present proposal the Council's use of restrictive planning Policies 2, 4 and 5, when they admit a great concern for the well-being of the property, would appear to be unreasonable.

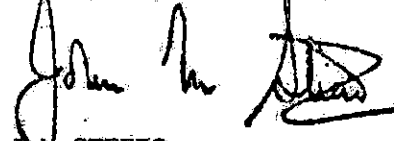
#### RECOMMENDATION

8. That the application by the appellant for partial costs be approved.

I have the honour to be

Sir

Your obedient Servant



J. A. STEERS  
Inspectors